



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

August 23, 1988

Honorable Jim D. Rudd  
Chairman  
Committee on Appropriations  
Texas House of Representatives  
P. O. Box 2910  
Austin, Texas 78769

LO-88-98

Dear Representative Rudd:

You ask whether "universal life insurance" coverage may be offered to state employees as part of the state employees' insurance plan authorized by article 3.50-2 of the Insurance Code or as an option in a cafeteria plan authorized under the same statute. Your first question is as follows:

Under the Texas Employees Uniform Group Insurance Benefits Act (article 3.50-2, Vernon's Texas Insurance Code), may the trustee of the state employees' insurance plan include universal life insurance coverage in a plan of group coverage?

You also ask whether an employee may authorize and the state implement a salary deduction for universal life insurance coverage under a plan of group coverage.

The Board of Trustees of the Employees Retirement System is trustee of the state employees' insurance plan. Ins. Code art. 3.50-2, § 3(a)(11); see V.T.C.S. Title 110B, §§ 25.001 - 25.003 (composition of Board of Trustees of Employees Retirement System). The Employees Retirement System has submitted the following description of "universal life insurance":

[A]n insurance contract or product that provides term life insurance and an accumulation fund for the insured. A part of the premium pays for term life insurance protection and the remainder is invested for the benefit of the insured. A universal life insurance

policy would permit the insured to withdraw funds from the accumulation portion of the policy, by cashing in or surrendering the policy . . . .

"Term" life insurance provides for payment of the proceeds only if the insured dies within the time specified in the policy. Gilley v. Missouri State Life Ins. Co., 285 S.W. 807 (Tex. 1926); see J. F. Dobbyn, Insurance Law in a Nutshell 9 (1981).

As we understand the term, universal life insurance is substantially as defined above but also has other characteristics. An explicit yearly charge is made for insurance protection and administrative expenses and reported to the policy-holder, and thus resembles term insurance. American Council of Life Insurance, Consumer Notes: Changing Life Insurance Products; Life Insurance: Universal Life Insurance, Consumer Reports 515 (August 1986). Most important, however, is that universal life involves flexible premium payments, variable as to amount and time of payment, and thus, the level of premiums chosen will determine for how long a term the policy can remain in force and how much cash reserve can be accumulated in the policy. See id..

We will address your question on the basis of the general definitions of universal life insurance set out in this opinion, and do not consider the terms of any particular contract for universal life insurance.

Article 3.50-2 of the Insurance Code states in section 2 that a purpose of the Texas Employees Uniform Group Insurance Benefits Act is

to enable the State of Texas to attract and retain competent and able employees by providing them with life, accident, and health benefits coverages at least equal to those commonly provided in private industry.

Ins. Code art. 3.50-2, § 2(b). The trustee is authorized to establish plans of group coverage

which in the trustee's discretion may include but are not necessarily limited to the following: group life coverages . . . health benefits plans . . . and any other group coverages which in the discretion of the

trustee with consultation from the advisory committee shall be deemed advisable. (Emphasis added.)

Id. § 5(a). See generally Ins. Code art. 3.50-2, § 18 (establishing Group Insurance Advisory Committee to advise and consult with trustee).

We assume that any particular group policy the trustee may offer conforms to the applicable Insurance Code provisions, including approval by the State Board of Insurance. The trustee has authority under section 5(a) of article 3.50-2 of the Insurance Code to include group universal life insurance coverage in the state employees' insurance plan.

Section 14(a) of article 3.50-2 of the Insurance Code authorizes the state "to deduct from or reduce the monthly compensation of the employee [by] . . . an amount sufficient to pay the amount of the premiums not covered by the states' contribution." The trustee may implement salary deductions for group universal life insurance coverage in accordance with this provision, including changes in premium amounts which may be a facet of a particular plan. The trustee may wish to place limits on the frequency and dollar amount of premium changes by persons who choose group universal life coverage. This, however, is a matter within the trustees' administrative discretion and not a subject of your request for advice.

You also ask whether universal life insurance coverage is eligible to be included as an option in a cafeteria plan adopted by the trustee under section 13B of article 3.50-2 of the Insurance Code. A "cafeteria plan" as defined in section 125 of the Internal Revenue Code is an employee benefit plan which in effect permits employees to choose to receive nontaxable fringe benefits in lieu of taxable cash consideration. If the conditions set out in the federal law and regulations are met, the fringe benefits may be excluded from gross income. See Attorney General Opinion JM-543 (1986). The question you ask is one of federal tax law, and neither the Internal Revenue Service nor the courts would have reason to accord any particular authority to an opinion of this office on this matter. The Employees Retirement System has requested a ruling from the Internal Revenue Ser-

Honorable Jim D. Rudd  
August 23, 1988  
Page 4

vice on this question. In view of the pendency of this matter with the Service, we will not address your second question at this time.

Very truly yours,



Sarah Woelk, Chief  
Letter Opinion Section



Rick Gilpin, Chairman  
Opinion Committee

APPROVED: OPINION COMMITTEE

SW/RG/SG/mc

Ref. RQ-1381  
ID#3159